IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.687 OF 1999
IN
COMPANY PETITION NO.621 OF 1995

Munirabad Chemicals Company	....	Appellant
Vs.		
B.C. Mody Exports Pvt. Ltd.	....	Respondent No.1
And		
The Registrar of Companies	....	Respondent No.2

Shri Vijay Agarwal i/b M/s. K.V. Aiyar & Associates for the Appellant.

None present for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: APRIL 03, 2007

ORAL JUDGMENT (Per D.G.Karnik, J.):

1. Heard. This appeal is directed against the Judgment and Order dated 16-3-1999 passed by the learned Company Judge, dismissing the winding up petition filed by the appellant on the ground that the notice of demand was not served at address of the registered office of the respondent No.1-company.

2. The respondent No.1-company was incorporated with its registered office at Room No.22, Second Floor, 105, Apollo Street, Bombay. The registered office of the company was shifted from the original place to Khetan

Bhawan, 5th Floor, 198, J. Tata Road, Churchgate Reclamation, Bombay-20 in March, 1970. Notice of change of address of the registered office was given to the Registrar of Companies on 2-4-1970 in accordance with Section 146 of the Companies Act, 1956 and the particulars of the change of address were duly recorded by him in the records.

3. The appellant has obtained a decree in the sum of Rs.2,13,500/- against the respondent No.1 in Suit No.1027 of 1978 on 24-4-1995. Though an appeal has been filed by the respondent-company against the said decree, no stay for execution of the decree was granted by the Appeal Court. In view of this, the appellant issued a statutory notice dated 13-7-1995 calling upon the respondent No.1 to pay to the appellant the decretal dues within 21 days, failing which it would be assumed that the respondent No.1 was unable to pay its debts. The notice was served on the respondent No.1 at 5th Floor, Khetan Bhawan, 198, J. Tata Road, Bombay-20.

4. As the respondent-company did not pay the dues despite the notice, the appellant filed a petition for winding up of the respondent No.1 under Sections 433 and 434 of the Companies Act. The respondent No.1 contested the petition and claimed that the address, namely 5th Floor, Khetan Bhawan, 198, J. Tata Road, Bombay-20 was

not the address of its registered office. The respondent No.1 claimed that its registered office was shifted to 105, Apollo Street Bombay Samachar Marg, Bombay-400 023 and the notice of change of address was also given to the Registrar of Companies. It further claimed that the statutory notice was never issued and served at the address of the registered office of the respondent No.1 and therefore the notice was not a valid notice.

5. Learned Company Judge accepted the contention of the respondent-company that the registered office of the company was shifted. He also held that the notice of change of address of the registered office of the respondent No.1 was given by the respondent No.1 to the Registrar of Companies in the prescribed Form No.18 within the time prescribed. The learned Company Judge, therefore, held that the notice of demand served at the old address of the registered office was not proper and dismissed the petition.

6. Learned counsel appearing on behalf of the appellant submitted before us that the learned Company Judge erred in holding that the registered office of the respondent No.1 was shifted from Khetan Bhawan, 198, J. Tata Road, Bombay-20 to 105, Apollo Street, Bombay Samachar Marg, Bombay-400 023. He submitted that inspection in the

office of the Registrar of Companies by the appellant did not disclose any intimation having been given by the respondent No.1 to the Registrar of Companies about the change of the address of the registered office. He, therefore, submitted that the appellant bona fide believed that the registered office of the respondent No.1 was still at Khetan Bhawan, 198, J. Tata Road, Bombay-20 and had issued the notice at the said address. The action of the appellant therefore could not be faulted and as the Registrar of Companies had not made any changes in his records, the appellant was entitled to assume that the address of the registered office of the respondent No.1 was as shown in the records of the office of the Registrar of Companies.

7. Copies of the correspondence between the respondent No.1 and the respondent No.2-the Registrar of Companies was filed, before the learned Company Judge. From the said correspondence it is clear that the respondent No.1 had intimated to the Registrar of Companies about the change in the address of its registered office by its letter dated 28th July, 1981 and it had also given the requisite intimation in Form No.18. It appears that, for the first time, the Registrar of Companies wrote a letter to the respondent-company on 8th March, 1999 that the requisite fee for recording the change of the address of the registered office was not paid and

therefore the change could not be recorded. The learned Company Judge disbelieved the explanation given by the Registrar of Companies that the change of address could not be recorded on the ground of non-payment of the requisite fee. For a long period of 18 years after filing of the intimation of change there was a complete silence on the part of the Registrar of Companies. It is not disputed that the respondent-company had intimated to the Registrar of Companies about the change in the address of its registered office by the letter dated 28th July, 1981. The learned Company Judge held that it is inconceivable that for 18 years the Registrar of Companies would not take any action and would not even intimate the respondent No.1 that the change could not be registered for non-payment of the fee. The learned Company Judge also noted in para 5 of his order that the subsequent correspondence was made by the Registrar of Companies with the respondent No.1 at the changed address of the registered office. In these circumstances, we find no error in the view taken by the learned Company Judge that the respondent-company had intimated to the Registrar of Companies about the change of the address of its registered office and had also filed the necessary Form No.18 on 28th July, 1981.

8. Learned counsel appearing for the appellant, however, strongly relied upon Regulation 18 of the

Companies Regulations, 1956. It would be useful at this stage to refer the extracts of Section 146 of the Companies Act and along side Regulation 18 of the Companies Regulations which read as under:

> "Section 146: (1) A company shall, as from the day on which it begins to carry on business, or as from the thirtieth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.
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> (2) Notice of the situation of the registered office, and of every change therein, shall be given within thirty days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:
>
> Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed -
>
> (a) in the case of an existing company,

outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the company.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If default is made in complying with the requirement of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues."

> "Regulation 18: No document required or authorised by or under the Act to be registered, recorded or filed by or with the Registrar shall be registered, recorded or taken on file until the fee, if any, payable in respect thereof under Schedule X to the Act and any additional fee imposed by the Registrar under section 611(2) are paid."

9. The sub-section (1) of Section 146 lays down that a company shall have a registered office to which all communications and notices may be addressed. The sub-section (2) of Section 146 says that notice of every change in the situation of the registered office shall be given within 30 days after the date of change to the Registrar who shall record the same. The sub-section (2) confers, firstly, a duty on the company to inform the Registrar of Companies of any change in the place of the registered office and simultaneously confers a duty on the Registrar of Companies to record such change. Though a time limit of 30 days has been prescribed for the company to inform to the Registrar of Companies any change in the place of the registered office, no time limit has apparently been statutorily imposed on the Registrar of Companies to record the change. However,

we are of the view that the Registrar of Companies must act within a reasonable time on a notice of change given by a company. The Registrar cannot wait for months and years together to record a change. What would be the reasonable period may depend upon the facts and circumstances of each case but it certainly cannot take 18 years for the Registrar of Companies to act. We are of the view that the Registrar of Companies could not have waited for 18 long years for recording the change of the address of the registered office of the respondent No.1.

10. Regulation 18 of the Companies Regulations no doubt says that no document required or authorised under the Act to be registered, recorded or filed by or with the Registrar shall be registered, recorded or taken on file until the fee, if any, payable in respect thereof has been paid. If any document is filed without payment of the prescribed fee, it is the duty of the Registrar to pass an order directing the person to pay the fee and/or to reject the document for non-payment of the filing fee or any other legally valid ground. He cannot sit over the document filed for months and years together, in this case for 18 years, and thereafter say that the prescribed fee has not been paid. It may be noted that it is not the case of the appellant nor of the Registrar of Companies that any other formality for recording

change of address of the registered office was not complied with by the respondent No.1. All other formalities appear to have been completed and the Registrar already has addressed all the correspondence to the respondent No.1 at the address of the new registered office.

11. In the circumstances, we are satisfied that the the place of registered office of the respondent-company was changed from Khetan Bhawan, 198, J. Tata Road, Bombay-20 to 105, Apollo Street, Bombay Samachar Marg, Bombay-400 023. The notice of demand was not issued at the address of the registered office of the respondent No.1. The learned Company Judge, therefore, committed no error in dismissing the company petition on the ground that the statutory notice of demand was not served at the registered office of the respondent No.1. The appeal, therefore, fails and is dismissed. Since the respondents have not appeared, there shall be no order as to costs.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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